

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D34948
G/ct

_____AD3d_____

Submitted - April 12, 2012

REINALDO E. RIVERA, J.P.
CHERYL E. CHAMBERS
SHERI S. ROMAN
ROBERT J. MILLER, JJ.

2011-00810

DECISION & ORDER

All State Properties, LLC, appellant, v Old Republic
National Title Insurance Co., respondent, et al.,
defendant.

(Index No. 21987/09)

Hutchinson & Hutchinson, P.C., Oyster Bay, N.Y. (Richard L. Hutchinson of
counsel), for appellant.

Solomon & Siris, P.C., Garden City, N.Y. (Stuart Siris and Keith S. Garret of
counsel), for respondent.

In an action to recover damages for breach of a title insurance policy, the plaintiff
appeals, as limited by its brief, from so much of an order of the Supreme Court, Nassau County
(Galasso, J.), entered January 6, 2011, as granted that branch of the cross motion of the defendant
Old Republic National Title Insurance Co. which was for summary judgment dismissing the
complaint insofar as asserted against it.

ORDERED that the order is affirmed insofar as appealed from, with costs.

The defendant Old Republic National Title Insurance Company (hereinafter Old
Republic) established its prima facie entitlement to judgment as a matter of law by demonstrating
that the plaintiff, its insured, breached the subject title insurance policy by failing to cooperate with
Old Republic in connection with the plaintiff's claim. It is undisputed that, less than one month after
giving Old Republic notice of its claim under the title insurance policy, the plaintiff commenced
litigation seeking to quiet title to the property that is the subject of the claim, and also named Old

Republic as a defendant in that action. While the mere act of commencing suit against one's insurer does not, standing alone, constitute noncooperation sufficient to relieve the insurer of its obligations under the policy (*see Emigrant Mtge. Co., Inc. v Washington Tit. Ins. Co.*, 78 AD3d 1112, 1114), here, the plaintiff's noncooperation was established by the fact that it also precipitously brought its own action on the claim, instead of affording Old Republic a reasonable time within which to investigate the claim and determine how to proceed. Since the plaintiff failed to raise a triable issue of fact in response to Old Republic's showing that the plaintiff was in material breach of the insurance policy due to its failure to cooperate, that branch of Old Republic's cross motion which was for summary judgment dismissing the complaint insofar as asserted against it was properly granted.

RIVERA, J.P., CHAMBERS, ROMAN and MILLER, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court